

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-05/09-249  
 )  
 Appeal of )

# INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Child Development Division (CDD), denying her request that her child care subsidy under the Family Support Child Care Service Need be paid to a Legally Exempt Child Care (LECC) provider. The CDD, as a policy matter, does not allow payment of child care funds to LECC providers when the service need is based upon Family Support Child Care. The issue is whether CDD abused its discretion in denying petitioner's request for a variance.

The following decision is based upon the briefs and supporting materials filed by the parties. The material facts are not in dispute.

## DISCUSSION

The petitioner is the parent of two young children who are five and two years old. The petitioner's children started child care with S.K. during February 2009. S.K. became a LECC provider shortly after starting her position

with petitioner's children. This case stems from petitioner's efforts to have CDD pay S.K. for her services.

Petitioner is eligible for a child care subsidy based on the Family Support Child Care service need. Section I.B.1.i. of the Child Care Financial Assistance Program Regulations (CC Regulations) defines Family Child Care as:

a prevention and early intervention service designed to reduce stress for families and their children and promote positive child development. The child care financial assistance may be authorized after a confidential application and risk assessment have been completed and reviewed. Generally authorized as Part Time or may be authorized as Full Time. Program duration is generally one year.

The petitioner is diagnosed with bipolar disorder, post traumatic stress disorder, and anxiety. She has recently been diagnosed with a lung disorder. She meets the criteria set out above.

CDD policies do not permit payment to LECCs for Family Support Child Care. When petitioner learned about the CDD policy, she filed a variance with CDD so that her child care subsidy would be paid to S.K. When petitioner learned that CDD would not grant her variance, petitioner requested a fair hearing in a letter dated April 22, 2009 and filed with the

Board on May 4, 2009.

As part of her appeal, petitioner filed a letter of support from her therapist, J.E., dated April 22, 2009. J.E. explained petitioner's background including her family history for mood disorders and the unstable environment she experienced as a child. J.E. wrote that petitioner needs to attend counseling sessions without her children. In addition, J.E. wrote that petitioner needs time without her children to do ordinary household tasks since petitioner's mood disorder "makes it difficult for her to function in this capacity when her children are in need of supervision."

Petitioner has concerns about using a licensed or registered day care center or provider based on two past experiences using licensed programs and because she does not want to disrupt the positive experience her children have with S.K.

On June 4, 2009, the Commissioner completed a review and affirmed the denial of petitioner's request based on CDD policy that LECC providers are not used for Family Support Child Care. A telephone status conference was held on June 29, 2009 and a briefing schedule was made.

The CDD administers a Child Care Financial Assistance Program; this program is a cooperative federal/state program. It is not an entitlement program. Federal intent is set out in 45 C.F.R. § 98.1(a) as follows:

- (1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;
- (2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

See also 45 C.F.R. §§ 98.1(b)(3), 98.1(c)(1)(2)(5).

CDD has promulgated both regulations and policies addressing the administration of the child care subsidy program. The CC regulations are silent regarding who can provide Family Support Child Care. (Family Support Child Care is one of ten service needs in the regulations; the majority of service needs are linked to employment or training/education.)

CDD has developed policies for Family Support Child Care. CDD policies limit payment for Family Support Child Care to licensed or registered providers who have participated in required training to become a specialized child care provider in recognition of the greater needs these

families have. CDD's rationale is that oversight and training is necessary for those providers who care for the children under the Family Support Child Care program. In contrast, LECC providers are exempt from regulation and licensing; they are not subject to the same regulatory oversight or requirements as registered or licensed providers. In many cases, LECC providers are relatives providing child care; they do not intend to provide child care to the public.

The Family Support Child Care program fills a special need that CDD has identified. Their policies regarding the identity of providers under this program are consistent with this need and consistent with the flexibility Congress has given states to develop their programs. Based on the foregoing, CDD did not abuse its discretion denying petitioner's variance request.

ORDER

The Department's decision is affirmed.

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